



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Jan G. Jaworski et al.
 Serial No. : 09/877,476
 Filed : June 8, 2001
 Title : FATTY ACID ELONGASE 3-KETOACYL COA SYNTHASE POLYPEPTIDES

Art Unit : 1638
 Examiner : E. McElwain

Commissioner for Patents
 Washington, D.C. 20231

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RESPONSE TO RESTRICTION REQUIREMENT

TECH CENTER 1600/2900

Responsive to the Restriction Requirement mailed October 2, 2002, Applicants elect the invention of Group VI, claims 12, 13, 15, 16, 18-21, 23, and 24. Applicants respectfully traverse this restriction.

The Examiner stated that "[i]nventions I-VII are each distinct products, which each differs chemically and structurally one from each of the others, and one is not required by any of the others. In addition, the polypeptides of Groups I-V do not require the nucleic acids of Groups VI and VII, since they can be made by a different method, such as by chemical synthesis, and the nucleic acids, cells and plants of Groups VI and VII do not require the polypeptides of Groups I-V" (page 3 of the Restriction Requirement). Applicants note that Group VII was mis-numbered as Group VI on page 2 of the Restriction Requirement.

Pending claims 2-25 all depend ultimately from claim 1. Therefore, all the pending claims contain the limitations recited in claim 1 (*i.e.*, first, second, and third polypeptide segments). Therefore, given the commonality of such limitations in all of the pending claims, Applicants submit that it would not be an undue burden on the Examiner when searching the subject matter of Group VI (nucleic acids encoding the claimed polypeptides, host cells and

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November 26, 2002
 Date of Deposit

Jill Hugo
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Jill Hugo
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plants containing such nucleic acids) to also search for polypeptides of claim 1, and polypeptides containing the limitations recited in claims 2-11.

Applicants further submit that restriction of claims 1-11 into different groups is improper. Applicants submit that claim 1 is directed toward a genus of polypeptides; claim 2 is directed toward a sub-genus of claim 1 (*i.e.*, a sub-genus of third polypeptide segments); claim 3 is directed toward a sub-genus of claim 2 (*i.e.*, a particular residue at a particular position within the third polypeptide segment); claims 4-7 are directed toward species of the genus of claim 3 (*i.e.*, specific sequences of the polypeptide of claim 3); claims 8 and 10 are directed toward sub-genera of claim 1 (*i.e.*, specific attributes of the polypeptide of claim 1); and claims 9 and 11 are directed toward sub-genera of the genera of claims 8 and 10, respectively (*i.e.*, particular fatty acyl substrates of the polypeptides of claims 8 and 10). See, for example, MPEP §806.04(a) – 806.04(i) and 808.01(a). Similarly, restriction of claims 12-25 (directed toward nucleic acids, host cells, and plants) based upon their dependency on claims 1 and 2, or claim 3, is not warranted.

In view of the above, Applicants submit that the pending claims can, at most, be restricted into two groups: Group I, claims 1-11 with appropriate sub-genus and species elections as indicated above, and Group II, claims 12-25. Support for Applicants' proposal for restriction can be found in the Examiner's classification of the claims, *i.e.*, the claims of Groups I-V (claim 1-11) were assigned to the same class and subclass (class 530, subclass 370), while the claims of Groups VI and VII (claims 12-25) were assigned to the same class and subclass (class 800, subclass 298). Applicants respectfully request reconsideration of the restriction of claims in view of the remarks herein.

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A check for \$55 is enclosed with a Petition for a One-Month Extension of Time. Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: November 26, 2002

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